

EXHIBIT 38

Jones, T. Mark - Vol. IV

December 9, 2008

Washington, DC

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

- - - - -x

IN RE: PHARMACEUTICAL : MDL NO. 1456
INDUSTRY AVERAGE WHOLESALE : CIVIL ACTION
PRICE LITIGATION : 01-CV-12257-PBS

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THIS DOCUMENT RELATES TO: :
U.S. ex rel. Ven-a-Care of : Hon. Patti B. Saris
the Florida Keys, Inc. :
v. :
Dey, Inc., et al. :
No. 05-11084-PBS :

- - - - -x

(CROSS NOTICED CAPTIONS ON FOLLOWING PAGES)

CONTINUED DEPOSITION OF T. MARK JONES

Washington, D.C.

Tuesday, December 9, 2008

VOLUME IV

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1 actions that were unsealed. Did I miss any?

2 **A. Can we review them again?**

3 Q. Well, we talked about the California,
4 Florida and Texas actions.

5 **A. Yes.**

6 Q. Okay. And there are no other state qui
7 tam actions that you could testify about today,
8 right?

9 **A. No.**

10 Q. Okay. Before we get into the issues
11 that we discussed yesterday, I'm just going to go
12 over a few additional things.

13 **A. Okay.**

14 Q. Setting aside any purchases made by
15 Ven-A-Care, for purposes of collecting
16 information in connection with this lawsuit, did
17 Ven-A-Care ever purchase a drug manufactured by
18 Dey?

19 **A. I think I testified last year, in my**
20 **30 (b) (6) document testimony, that we lost a bunch**
21 **of records in a hurricane, so what I can see, I**
22 **haven't seen any Dey, other than some invoices**

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1 that we had purchased for demonstrative reasons.

2 I'm having Miss Forrest look through
3 and see if she can find any kind of EOBs that
4 have Dey NDC numbers on them in the Medicaid
5 program. So we're going to sort of look for that
6 today, to see if we could verify whether we -- I
7 know we purchased.

8 If we have them on an EOB, you know, an
9 explanation of benefits from the program, then
10 that means we purchased the drug.

11 Q. Okay. So it would be fair to say that
12 you're not sure whether or not Ven-A-Care ever
13 dispensed a Dey drug to a Medicare or a Medicaid
14 patient?

15 A. Well, I don't want to say that we did
16 or didn't without the information.

17 Q. Okay. I'm just going to show you a
18 document and see if it refreshes your
19 recollection at all. This is a document
20 previously marked Dey Exhibit 216.

21 Now, you'll see that this is a claims
22 submitted to Medicare for Albuterol Sulfate

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1 inhalation, unit dose 0.083 percent, which is a
2 drug manufactured by Dey, but it does not say
3 whether or not Dey manufactured this particular
4 generic drug.

5 Do you know whether or not this drug
6 was manufactured by Dey that was the subject of
7 this claim?

8 **A. I can't say that I do, because there's**
9 **no indication for it.**

10 Q. Okay. Thank you.

11 Let's just quickly go over the
12 purchases that you do know of made by Ven-A-Care
13 in connection with litigation.

14 When was the first time Ven-A-Care made
15 such a purchase?

16 **A. I want to say I believe it was around**
17 **the year 2000. We did some purchases through**
18 **ANDA, which is a gen -- you know, a generic**
19 **wholesale distributor, specialty distributor.**

20 Q. Do you know which drugs were purchased?

21 **A. I believe that it was Albuterol**
22 **Ipratropium, I think, I want to say Cromolyn.**

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1 clear, Medicare patients were a small part of
2 Ven-A-Care's business? Is that a fair
3 characterization?

4 A. I believe that's a fair
5 characterization.

6 Q. Or actually to be clear, I think -- I
7 think the testimony was that Medicare was a very
8 small part and Medicaid was a small part.

9 A. Yes.

10 Q. That's correct?

11 A. That would be a good characterization.

12 Q. And that by mid 1996, Ven-A-Care was
13 only seeing a few patients as part of its
14 practice; is that correct?

15 A. Yes. I think by 1996, we had pretty
16 much exhausted our patient base. There were --
17 there were patients that we'd had that we had
18 kept that were long term, but we basically
19 weren't getting any -- any really new patients.

20 I think in '98, I treated my mother. I
21 mean, that -- that's kind of where we were. And
22 we were doing back billings on stuff that we

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1 never got. But, you know, the Immune Care
2 venture essentially wiped us out.

3 Q. Okay. And they wiped you out by
4 sometime in the mid '90s? Is that fair?

5 A. I would say, you know, mid -- mid '90s.
6 I mean, the writing was on the wall.

7 Q. Now, during its investigation of
8 Roxane, did Ven-A-Care ever acquire knowledge
9 that Roxane ever informed a provider on how to
10 fill out a Medicare or Medicaid claim form?

11 A. You mean like either personally or
12 through some sort of a billing guide book or --
13 no.

14 Q. You're not aware, are you, that anyone
15 affiliated with Roxane ever told a provider what
16 to fill in as, for instance, a usual and
17 customary charge in a Medicaid form?

18 A. No.

19 Q. And Roxane certainly never communicated
20 to Ven-A-Care any information on how it should
21 submit or not submit claims in this practice?

22 A. No.

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